In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 271

MAURICE L. DAVIS, PETITIONER

v.

ROMUALD M. SOJA, INTERNAL REVENUE AGENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The question presented is whether an order directing compliance with an Internal Revenue summons issued under Section 7602 of the Internal Revenue Code of 1954, in an enforcement proceeding brought under Section 7604(b) of the Internal Revenue Code of 1954, is an interlocutory order. If it is an interlocutory order, the court of appeals lacks jurisdiction of the appeal under 28 U.S.C. 1291, which allows appeals only from "final decisions" of the district courts.

Revenue agent Soja served several Internal Revenue summonses on petitioner, requiring him to produce certain books and records. Petitioner refused to comply, and an enforcement proceeding was insti-

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tuted. After a hearing, the district court ordered compliance. On petitioner's appeal from that order, the Seventh Circuit dismissed for lack of jurisdiction. In so doing, it characterized a Section 7604(b) enforcement proceeding—as distinguished from proceedings for the enforcement of other administrative subpoenas[1]—as one for contempt *ab initio*: "the order to testify and produce the records designated is but an interlocutory step to afford the witness an opportunity to purge himself" and "not the 'end of a proceeding begun against the witness'" (Pet. 5a). It followed, the court concluded, that only an order sentencing the witness for contempt is appealable.

We agree that, as the court of appeals observed (Pet. 6a), the decision in the instant case cannot be reconciled with the decisions of the First,[2] Second,[3] Fifth[4] and Eighth[5] Circuits. The issue arises frequently and its resolution is administratively important. Accordingly, the government does not oppose the issuance of a writ of certiorari.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

AUGUST 1962.

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[1] Cf. *Ellis* v. *Interstate Commerce Commission*, 237 U.S. 434, 442; *Cobbledick* v. *United States*, 309 U.S. 323, 329–330.

[2] *O'Connor* v. *O'Connell*, 253 F. 2d 365.

[3] *In re Albert Lindley Lee Memorial Hospital*, 209 F. 2d 122, certiorari denied *sub nom. Cincotta* v. *United States*, 347 U.S. 960.

[4] *Falsone* v. *United States*, 205 F. 2d 734, certiorari denied, 346 U.S. 864.

[5] *Brownson* v. *United States*, 32 F. 2d 844.

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